

1 Martha L. Black
 2 Assistant Regional Counsel
 3 United States Environmental
 4 Protection Agency, Region 9
 5 215 Fremont Street
 6 San Francisco, California 94105
 7 (415) 974-0895

8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9 REGION IX

10 IN THE MATTER OF;)
 11 Rigel Street Drum Site,)
 12 San Diego, California)
 13)
 14 Samuel A. Boykin, Becky E. Boykin,)
 15 Charles D. Halphen, Industrial)
 16 Marine Non-Destructive Testing,)
 17 Inc.)
 18 Respondents.)
 19)

20 ADMINISTRATIVE CONSENT ORDER

21 I. Statement of Jurisdiction and Purpose

22 A. This agreement is made and entered into by the U.S. En-
 23 vironmental Protection Agency ("EPA"), and Samuel A. Boykin,
 24 Becky E. Boykin, Charles D. Halphen and Industrial Marine Non-
 25 Destructive Testing, Inc. ("Settling Parties"). The purpose of
 26 this agreement is: 1) to provide reimbursement to EPA for
 27 response costs incurred at or in connection with a removal action
 28 of metal plating shop wastes from outside of the building used by
 Industrial Marine Nondestructive Testing, Inc., located at 1610-
 1620 Rigel Street (the "Site"), in San Diego, California and 2)
 to resolve EPA's claims against the Settling Parties for such
 response costs.

B. EPA is authorized to enter into this Agreement pursuant
 to the authority vested in the EPA Administrator by Section

1 122(h)(1) of the Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, as amended by the Super-
3 fund Amendments and Reauthorization Act of 1986, ("CERCLA"),
4 which authority has been delegated to the Regional Administrators
5 of the EPA by EPA Delegation No. 14-14-D (Feb. 26, 1987).

6 C. This Agreement shall be binding upon EPA and the Settling
7 Parties, their directors, officers, employees, agents, successors
8 and assigns. Each signatory to this Agreement represents that he
9 or she is fully authorized to enter into the terms and conditions
10 of this Agreement and to legally bind the party represented by
11 him or her. The Settling Parties agree to undertake all actions
12 required by this Agreement.

13 D. The Settling Parties consent to and will not contest
14 EPA's authority to enter into this Agreement or to implement or
15 to enforce its terms.

16

17 II. Facts and Law

18 A. Hazardous substances, pollutants, and/or contaminants as
19 defined in Sections 101(14) and 104(a)(2) of CERCLA, 42 U.S.C.
20 §§ 9601(14) and 9604(a)(2), were or were threatened to have been
21 released into the environment at the Site.

22 B. As a result of releases or threatened releases, EPA un-
23 dertook response actions at the Site pursuant to Section 104 of
24 CERCLA, 42 U.S.C. § 9604.

25 C. In March 1988, formal demand for response costs was made
26 of the Settling Parties in the amount of \$221,401.04. EPA has in-
27 curred costs at least in the amount of \$221,401.04 in performing

28

1 response activities in connection with the Site. EPA is entitled
2 to seek recovery from responsible parties for response costs in-
3 curred at or in connection with the Site, including interest,
4 pursuant to CERCLA section 107(a).

5 D. The Settling Parties are responsible parties pursuant to
6 Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are liable for
7 response costs incurred at or in connection with the Site.

8 E. EPA has determined that a settlement of the response cost
9 liability for \$221,401.04 is in the public interest.

10

11 III. Agreement

12 A. The Settling Parties agree to pay to the Hazardous Sub-
13 stance Superfund \$221,401.04 within ninety days of the effective
14 date of this Order. Beginning on the twenty-second day from the
15 effective date of this Order, interest shall accrue at the rate
16 of 6.99% per annum.

17 B. The payment shall be made by certified or cashier's check
18 made payable to "EPA-Hazardous Substance Superfund." The check
19 shall be sent to:

20 EPA Superfund
21 P.O. Box 371003M
22 Pittsburgh, Pennsylvania 15251

23

24 C. Each Settling Party shall simultaneously send a copy of
25 its check to:

26 Martha L. Black
27 Office of Regional Counsel

28

215 Fremont Street
San Francisco, CA 94105

D. In addition to any other remedies or sanctions available to EPA, any Settling Party who fails or refuses to comply with any term or condition of this Order shall be subject to enforcement action pursuant to Section 122 (h)(3) of CERCLA.

E. Subject to Paragraph III. G of this Order, upon payment of the amount specified in Paragraph III.A. of this Order, EPA covenants not to sue or to take any other civil or administrative action against the Settling Parties for "Covered Matters." Covered Matters shall include civil liability under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for reimbursement of response costs incurred at or in connection with the Site as of the effective date of this Order. EPA agrees that by entering into and carrying out the terms of this Order, each Settling Party will have resolved its liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA and shall not be liable except to other Settling Parties for claims for Covered Matters.

F. This Agreement shall not affect or modify the rights or remedies any of the Settling Parties may have against the other Settling Parties with respect to the Site, the Clean-up or the costs thereof, or the liability of any Settling Party to the other Settling Parties for EPA costs. This Agreement shall not constitute any admission of liability or responsibility for any contamination of the Site.

1 G. Respondents reserve any and all rights of contribution
2 from any or all persons who are not named as Respondents in this
3 Consent Order for all costs incurred by Respondents under this
4 Consent Order or otherwise complying with the requirements of this
5 Order. Nothing in this Order shall be construed as limiting
6 Respondents right to seek contribution from any or all liable
7 persons who are not named as Respondents in this Consent Order.

8 H. Nothing in this Order is intended to be nor shall it be
9 construed as a release or covenant not to sue for any claim or
10 cause of action, administrative or judicial, civil or criminal,
11 past or future, in law or in equity, which EPA may have against
12 the Settling Parties for:

13 a) any liability as a result of failure to make the
14 payments required by Paragraph III.A. of this Order; or

15 b) any matters not expressly included in Covered Mat-
16 ters, including, without limitation, any liability for damages to
17 natural resources or future response costs incurred after the ef-
18 fective date of this Order.

19 I. Nothing in the Order is intended to be nor shall be con-
20 strued as a release or covenant not to sue for any claim or cause
21 of action, administrative or judicial, civil or criminal, past or
22 future, in law or in equity, which EPA may have against any
23 person, firm, corporation or other entity not a signator to this
24 Order.

25 J. In consideration of EPA's covenant not to sue in
26 Paragraph III.E. of this Order, the Settling Parties agree not to
27 assert any claims or causes of action against the United States
28

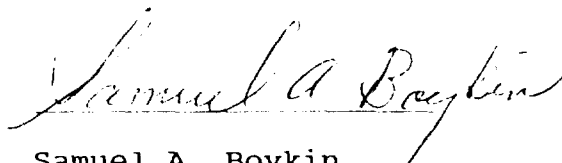
1 or the Hazardous Substance Superfund arising out of response ac-
2 tivities undertaken at the Site, or to seek any other costs,
3 damages, or attorney's fees from the United States, its agencies,
4 employees or contractors arising out of response activities un-
5 dertaken at the Site. The Settling Parties waive any right they
6 might have to affirmatively seek reimbursement from EPA for any
7 cost pursuant to 42 U.S.C. §9606.

8 K. This Order shall be subject to a thirty-day public com-
9 ment period pursuant to Section 122(i) of CERCLA. In accordance
10 with Section 122(i)(3) of CERCLA, EPA may withdraw its consent to
11 this Order if comments received disclose facts or considerations
12 which indicate that this Order is inappropriate, improper or in-
13 adequate. The Regional Administrator of EPA, Region 9, has
14 determined that the total response costs incurred to date at or
15 in connection with the Site do not exceed \$500,000, excluding in-
16 terest.

17 L. The effective date of this Agreement shall be the date
18 upon which EPA issues written notice to the Settling Parties that
19 the public comment period pursuant to Paragraph III.J. of this
20 Agreement has closed and that the comments received, if any, do
21 not require modification of or EPA withdrawal from this Agree-
22 ment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

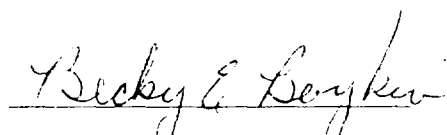
IT IS SO AGREED.



Samuel A. Boykin

8-30-88

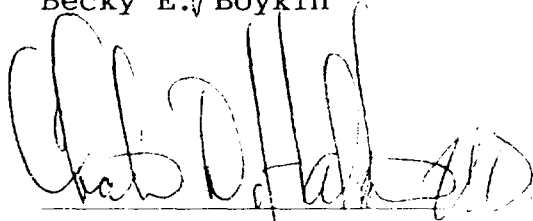
DATE



Becky E. Boykin

8-30-88

DATE

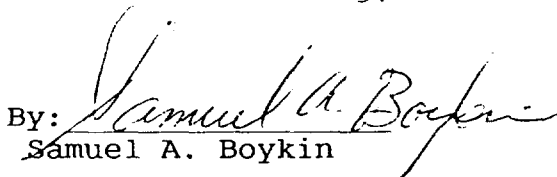


Charles D. Halphen

9/1/88

DATE

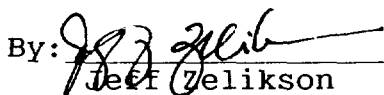
Industrial Marine Non-
Destructive Testing, Inc

By: 
Samuel A. Boykin

8-30-88

DATE

U.S. Environmental Protection Agency

By: 
Jeff Zelikson
Director, Toxics and Waste
Management Division,
Region IX

9-9-88

DATE